

AMENDED IN SENATE MAY 2, 2006
AMENDED IN SENATE APRIL 18, 2006

SENATE BILL

No. 1325

Introduced by Senator Scott

February 16, 2006

An act to amend Sections 7620, 7630, 7633, 7825, *and* 8700, ~~and 8815~~ of, and to add Sections 7606 and 8613.5 to, the Family Code, relating to adoption.

LEGISLATIVE COUNSEL'S DIGEST

SB 1325, as amended, Scott. Adoption.

(1) Existing law requires a person who may have conceived a child by an act of intercourse to submit to the jurisdiction of the courts of this state and specifies the venue where an action may be filed by or against that person. Existing law permits a child, a child's natural mother, a presumed father or other interested party, as specified, to bring an action to determine the existence or nonexistence of a father and child relationship.

This bill would additionally require a person who causes conception through assisted reproduction in this state to submit to the jurisdiction of the courts of this state. This bill would additionally permit a person who enters an assisted reproduction agreement, as specified, to bring an action to establish a parent and child relationship. This bill would require an action by or against that person to be filed where ~~the assisted reproduction occurs or as stipulated in an assisted reproduction agreement~~ *the child is expected to be born or is born*.

(2) Under existing law, an action to determine a parent and child relationship may be brought before the birth of that child.

This bill would permit the court to enter an order or judgment based on that action before the birth of the child. *This bill would further prohibit enforcement of that order or judgment until the birth of the child.*

(3) Under existing law, if a parent is convicted of a felony, a proceeding to terminate parental rights may be filed.

This bill would additionally permit the court, as part of a proceeding to terminate parental rights, to consider a parent's criminal record prior to the felony conviction, *as specified*, in making a finding that a parent is unfit to have future custody or control of his or her child.

(4) Under existing law, if a proceeding to terminate the parental rights of a presumed father has been filed, an action to determine the parent and child relationship between the presumed father and child is required to be consolidated with the termination proceeding.

This bill would require an action to determine the existence or nonexistence of a parent and child relationship between a presumed father and child to be consolidated with a proceeding that has been filed for the emancipation of the child.

(5) Under existing law, a birth parent may relinquish a child to a licensed adoption agency for the adoption of that child. Existing law requires the licensed adoption agency to forward a written relinquishment signed by the birth parent to the Department of Social Services. Under existing law, that relinquishment is final within 10 business days after the relinquishment is filed with the department, unless a longer period of time is necessary, as specified. Under existing law, if a birth mother relinquishes a child, the presumed father of that child may waive notice of or consent to the adoption of the child if he executes a form developed by the department before a notary.

This bill would require the relinquishment to be final ~~when 10 business days after the relinquishment is filed with the department unless the department sends written acknowledgment of receipt of the relinquishment before that date. This bill would require, if the department fails to send written acknowledgment of receipt of the relinquishment, that the relinquishment is deemed final 10 business days after the licensed adoption agency sent and filed the relinquishment with the department.~~ This bill would permit a presumed father to waive notice of or consent to the adoption if he executes the form developed by the department before a representative of a licensed adoption agency.

~~(6) Under existing law, if a birth parent rescinds consent to an adoption within a time specified and requests return of the child, the child is immediately returned to the birth parent.~~

~~This bill would require the court, if a birth parent rescinds consent to an adoption and before the child is returned to the birth parent, to make a finding that the return of the child to the birth parent serves the best interests of the child.~~

~~(7)–~~

(6) Under existing law, if a prospective adoptive parent is in military service or service for another recognized entity, as specified, and shows by satisfactory evidence that it is impossible or impracticable to appear in court for an adoption proceeding, the prospective adoptive parent may make his or her appearance at the proceeding through an attorney.

This bill would additionally permit a prospective adoptive parent to appear at an adoption proceeding through an attorney if the prospective adoptive parent shows by satisfactory evidence that ~~there is a substantial hardship in appearing~~ *it is impossible or impracticable to appear* at the adoption proceeding.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 7606 is added to the Family Code, to
2 read:

3 7606. ~~(a)–~~As used in this part, the following definitions shall
4 apply:

5 ~~(1)~~

6 (a) “Assisted reproduction” means conception by any means
7 other than sexual intercourse.

8 ~~(2)~~

9 (b) “Assisted reproduction agreement” means a written
10 ~~agreement by a person who intends to be the parent of a child or~~
11 ~~children born through assisted reproduction; contract that~~
12 ~~includes a person who intends to be the legal parent of a child or~~
13 ~~children born through assisted reproduction and that defines the~~
14 ~~terms of the relationship between the parties to the contract.~~

15 SEC. 2. Section 7620 of the Family Code is amended to read:

1 7620. (a) A person who has sexual intercourse or causes
2 conception with the intent to become a *legal* parent by assisted
3 reproduction in this state thereby submits to the jurisdiction of
4 the courts of this state as to an action brought under this part with
5 respect to a child who may have been conceived by that act of
6 intercourse or assisted reproduction.

7 (b) An action under this part shall be brought in one of the
8 following:

9 (1) The county in which the child resides or is found.

10 (2) The county in which a licensed California adoption agency
11 maintains an office if that agency brings the action.

12 (3) If the father is deceased, the county in which proceedings
13 for probate of the estate of the father of the child have been or
14 could be commenced.

15 ~~(4) The county in which conception through assisted~~
16 ~~reproduction occurs or as stipulated in an assisted reproduction~~
17 ~~agreement.~~

18 *(4) In an action relating to an assisted reproduction*
19 *agreement, the county in which the child is expected to be born*
20 *or is born.*

21 SEC. 3. Section 7630 of the Family Code is amended to read:

22 7630. (a) A child, the child's natural mother, a man
23 presumed to be the child's father under subdivision (a), (b), or (c)
24 of Section 7611, an adoption agency to whom the child has been
25 relinquished or a prospective adoptive parent of the child; may
26 bring an action as follows:

27 (1) At any time for the purpose of declaring the existence of
28 the father and child relationship presumed under subdivision (a),
29 (b), or (c) of Section 7611.

30 (2) For the purpose of declaring the nonexistence of the father
31 and child relationship presumed under subdivision (a), (b), or (c)
32 of Section 7611 only if the action is brought within a reasonable
33 time after obtaining knowledge of relevant facts. After the
34 presumption has been rebutted, paternity of the child by another
35 man may be determined in the same action, if he has been made
36 a party.

37 (b) Any interested party may bring an action at any time for
38 the purpose of determining the existence or nonexistence of the
39 father and child relationship presumed under subdivision (d) or
40 (f) of Section 7611.

(c) An action to determine the existence of the father and child relationship with respect to a child who has no presumed father under Section 7611 or whose presumed father is deceased may be brought by the child or personal representative of the child, the Department of Child Support Services, the mother or the personal representative or a parent of the mother if the mother has died or is a minor, a man alleged or alleging himself to be the father, or the personal representative or a parent of the alleged father if the alleged father has died or is a minor.

(d) (1) If a proceeding has been filed under Chapter 2 (commencing with Section 7820) of Part 4, an action under subdivision (a) or (b) shall be consolidated with that proceeding. The parental rights of the presumed father shall be determined as set forth in Sections 7820 through 7829, inclusive.

(2) If a proceeding pursuant to Section 7662 has been filed under Chapter 5 (commencing with Section 7660), an action under subdivision (c) shall be consolidated with that proceeding. The parental rights of the alleged natural father shall be determined as set forth in Section 7664.

(3) The consolidated action under ~~paragraphs~~ *paragraph* (1) or (2) shall be heard in the court in which the proceeding is filed, unless the court finds, by clear and convincing evidence, that transferring the action to the other court poses a substantial hardship to the petitioner. Mere inconvenience does not constitute a sufficient basis for a finding of substantial hardship. If the court determines there is a substantial hardship, the consolidated action shall be heard in the court in which the paternity action is filed.

(e) A party to an assisted reproduction agreement may bring an action at any time to ~~determine the existence of~~ *establish* a parent and child relationship *consistent with the intent expressed in that assisted reproduction agreement*.

SEC. 4. Section 7633 of the Family Code is amended to read:

7633. An action under this chapter may be brought ~~and~~, an order or judgment may be entered before the birth of the child, *and enforcement of that order or judgment shall be stayed until the birth of the child*.

SEC. 5. Section 7825 of the Family Code is amended to read:

7825. (a) A proceeding under this part may be brought where both of the following requirements are satisfied:

1 (1) The child is one whose parent or parents are convicted of a
2 felony.

3 (2) The facts of the crime of which the parent or parents were
4 convicted are of such a nature so as to prove the unfitness of the
5 parent or parents to have the future custody and control of the
6 child. In making a determination pursuant to this section, the
7 court may consider the parent's criminal record prior to the
8 felony conviction *to the extent that the criminal record*
9 *demonstrates a pattern of behavior substantially related to the*
10 *welfare of the child or the parent's ability to exercise custody*
11 *and control regarding his or her child.*

12 (b) The mother of a child may bring a proceeding under this
13 part against the father of the child, where the child was conceived
14 as a result of an act in violation of Section 261 of the Penal Code,
15 and where the father was convicted of that violation. For
16 purposes of this subdivision, there is a conclusive presumption
17 that the father is unfit to have custody or control of the child.

18 SEC. 6. Section 8613.5 is added to the Family Code, to read:

19 8613.5. (a) ~~(1) If the it is impossible or impracticable for~~
20 ~~either prospective adoptive parent is unable to make an~~
21 ~~appearance in person due to substantial hardship to the~~
22 ~~prospective adoptive parent, and the circumstances are~~
23 ~~established by satisfactory~~ *clear and convincing documentary*
24 *evidence, the court may, in its discretion, waive the personal*
25 *appearance of the prospective adoptive parent. The appearance*
26 *may be made for the prospective adoptive parent by counsel,*
27 *commissioned and empowered in writing for that purpose. The*
28 *power of attorney may be incorporated in the adoption petition.*

29 (2) *For purposes of this section, if the circumstances that*
30 *make an appearance in person by a prospective adoptive parent*
31 *impossible or impracticable are temporary in nature or of a*
32 *short duration, the court shall not waive the personal*
33 *appearance of that prospective adoptive parent.*

34 (b) If the prospective adoptive parent is permitted to appear by
35 counsel, the agreement may be executed and acknowledged by
36 the counsel, or may be executed by the absent party before a
37 notary public, or any other person authorized to take
38 acknowledgments including the persons authorized by Sections
39 1183 and 1183.5 of the Civil Code.

1 (c) If the prospective adoptive parent is permitted to appear by
2 counsel, or otherwise, the court may, in its discretion, cause an
3 examination of the prospective adoptive parent, other interested
4 person, or witness to be made upon deposition, as it deems
5 necessary. The deposition shall be taken upon commission, as
6 prescribed by the Code of Civil Procedure, and the expense
7 thereof shall be borne by the petitioner.

8 (d) The petition, relinquishment or consent, agreement, order,
9 report to the court from any investigating agency, and any power
10 of attorney and deposition shall be filed in the office of the clerk
11 of the court.

12 (e) The provisions of this section permitting an appearance by
13 counsel are equally applicable to the spouse of a prospective
14 adoptive parent who resides with the prospective adoptive parent
15 outside this state.

16 (f) If, pursuant to this section, neither prospective adoptive
17 parent need appear before the court, the child proposed to be
18 adopted need not appear. If the law otherwise requires that the
19 child execute any document during the course of the hearing, the
20 child may do so through counsel.

21 (g) If none of the parties appears, the court may not make an
22 order of adoption until after a report has been filed with the court
23 pursuant to Section 8715, 8807, 8914, or 9001.

24 SEC. 7. Section 8700 of the Family Code is amended to read:

25 8700. (a) Either birth parent may relinquish a child to the
26 department or a licensed adoption agency for adoption by a
27 written statement signed before two subscribing witnesses and
28 acknowledged before an authorized official of the department or
29 agency. The relinquishment, when reciting that the person
30 making it is entitled to the sole custody of the child and
31 acknowledged before the officer, is prima facie evidence of the
32 right of the person making it to the sole custody of the child and
33 the person's sole right to relinquish.

34 (b) A relinquishing parent who is a minor has the right to
35 relinquish his or her child for adoption to the department or a
36 licensed adoption agency, and the relinquishment is not subject
37 to revocation by reason of the minority.

38 (c) If a relinquishing parent resides outside this state and the
39 child is being cared for and is or will be placed for adoption by
40 the department or a licensed adoption agency, the relinquishing

1 parent may relinquish the child to the department or agency by a
2 written statement signed by the relinquishing parent before a
3 notary on a form prescribed by the department, and previously
4 signed by an authorized official of the department or agency, that
5 signifies the willingness of the department or agency to accept
6 the relinquishment.

7 (d) If a relinquishing parent and child reside outside this state
8 and the child will be cared for and will be placed for adoption by
9 the department or a licensed adoption agency, the relinquishing
10 parent may relinquish the child to the department or agency by a
11 written statement signed by the relinquishing parent, after that
12 parent has satisfied the following requirements:

13 (1) Prior to signing the relinquishment, the relinquishing
14 parent shall have received, from a representative of an agency
15 licensed or otherwise approved to provide adoption services
16 under the laws of the relinquishing parent's state of residence, the
17 same counseling and advisement services as if the relinquishing
18 parent resided in this state.

19 (2) The relinquishment shall be signed before a representative
20 of an agency licensed or otherwise approved to provide adoption
21 services under the laws of the relinquishing parent's state of
22 residence whenever possible or before a licensed social worker
23 on a form prescribed by the department, and previously signed by
24 an authorized official of the department or agency, that signifies
25 the willingness of the department or agency to accept the
26 relinquishment.

27 (e) (1) The relinquishment authorized by this section has no
28 effect until a certified copy is sent to, and filed with, the
29 department. The licensed adoption agency shall send that copy
30 by certified mail, return receipt requested, or by overnight courier
31 or messenger, with proof of delivery, to the department no earlier
32 than the end of the business day following the signing thereof.
33 ~~The relinquishment shall be final when the department sends~~
34 ~~written acknowledgment of receipt of the relinquishment, unless~~
35 ~~a longer period of time is necessary due to a pending court action~~
36 ~~or some other cause beyond the control of the department. If the~~
37 ~~department fails to send written acknowledgment of receipt of~~
38 ~~the relinquishment, the relinquishment shall be deemed final 10~~
39 ~~business days after the relinquishment was sent to and filed with~~
40 ~~the department. After the relinquishment is final, it may~~ *The*

1 *relinquishment shall be final 10 business days after receipt of the*
2 *filing by the department, unless any of the following apply:*

3 (A) *The department sends written acknowledgment of receipt*
4 *of the relinquishment prior to the expiration of that 10-day*
5 *period, at which time the relinquishment shall be final.*

6 (B) *A longer period of time is necessary due to a pending*
7 *court action or some other cause beyond control of the*
8 *department.*

9 (2) *After the relinquishment is final, it may be rescinded only*
10 *by the mutual consent of the department or licensed adoption*
11 *agency to which the child was relinquished and the birth parent*
12 *or parents relinquishing the child.*

13 (f) *The relinquishing parent may name in the relinquishment*
14 *the person or persons with whom he or she intends that*
15 *placement of the child for adoption be made by the department or*
16 *licensed adoption agency.*

17 (g) *Notwithstanding subdivision (e), if the relinquishment*
18 *names the person or persons with whom placement by the*
19 *department or licensed adoption agency is intended and the child*
20 *is not placed in the home of the named person or persons or the*
21 *child is removed from the home prior to the granting of the*
22 *adoption, the department or agency shall mail a notice by*
23 *certified mail, return receipt requested, to the birth parent signing*
24 *the relinquishment within 72 hours of the decision not to place*
25 *the child for adoption or the decision to remove the child from*
26 *the home.*

27 (h) *The relinquishing parent has 30 days from the date on*
28 *which the notice described in subdivision (g) was mailed to*
29 *rescind the relinquishment.*

30 (1) *If the relinquishing parent requests rescission during the*
31 *30-day period, the department or licensed adoption agency shall*
32 *rescind the relinquishment.*

33 (2) *If the relinquishing parent does not request rescission*
34 *during the 30-day period, the department or licensed adoption*
35 *agency shall select adoptive parents for the child.*

36 (3) *If the relinquishing parent and the department or licensed*
37 *adoption agency wish to identify a different person or persons*
38 *during the 30-day period with whom the child is intended to be*
39 *placed, the initial relinquishment shall be rescinded and a new*
40 *relinquishment identifying the person or persons completed.*

(i) If the parent has relinquished a child, who has been found to come within Section 300 of the Welfare and Institutions Code or is the subject of a petition for jurisdiction of the juvenile court under Section 300 of the Welfare and Institutions Code, to the department or a licensed adoption agency for the purpose of adoption, the department or agency accepting the relinquishment shall provide written notice of the relinquishment within five court days to all of the following:

(1) The juvenile court having jurisdiction of the child.

(2) The child's attorney, if any.

(3) The relinquishing parent's attorney, if any.

(j) The filing of the relinquishment with the department terminates all parental rights and responsibilities with regard to the child, except as provided in subdivisions (g) and (h).

(k) The department shall adopt regulations to administer the provisions of this section.

SEC. 8. ~~Section 8815 of the Family Code is amended to read:~~

~~8815. (a) Once the revocable consent to adoption has become permanent as provided in Section 8814.5, the consent to the adoption by the prospective adoptive parents may not be withdrawn.~~

~~(b) Before the time when the revocable consent becomes permanent as provided in Section 8814.5, the birth parent or parents may request return of the child. In such a case the court shall order the child restored to the care and custody of the birth parent or parents subject to the provisions of Section 3041.~~

~~(c) If the person or persons with whom the child has been placed have concerns that the birth parent or parents requesting return of the child are unfit or present a danger of harm to the child, that person's or those persons' only option is to report their concerns to the investigating adoption agency and the appropriate child welfare agency. These concerns shall not be a basis for failure to immediately return the child.~~